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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,511	11/20/2003	Pablo Rodriguez Fernandez	03198	5625
23338	7590	02/08/2006		
DENNISON, SCHULTZ, DOUGHERTY & MACDONALD 1727 KING STREET SUITE 105 ALEXANDRIA, VA 22314			EXAMINER GORMAN, DARREN W	
			ART UNIT	PAPER NUMBER
			3752	

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/716,511

Applicant(s)

FERNANDEZ, PABLO
RODRIGUEZ

Examiner

Darren W. Gorman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2005 and 23 January 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 10 is/are rejected.
- 7) ☒ Claim(s) 3-9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 15, 2005 has been entered. Further, Applicant's supplemental amendment filed on January 23, 2006, submitted in order to obviate potential indefiniteness issues discussed during a personal interview held January 11, 2006, has also been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ridgeway, USPN 4,091,997, in view of Coffey et al., USPN 3,088,677 and Berkan, USPN 4,565,323.

Ridgeway shows a rotating underground sprinkler with a pop-up head (see Figures 1 and 2) having an underground casing (30) with an upper cylindrical part (90) of a first diameter and a lower cylindrical part (92) of a second diameter, a cover (32) on a top portion of the upper

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cylindrical part and fixed to the pop-up sprinkler head, wherein the sprinkler head is operably coupled to a piston (52) having a smooth tubular cylindrical body (54), the piston being operable as a result of water pressure and displaced proportionally to the water pressure against the resilience of a permanent draw-spring (106), the sprinkler comprising: a cleaning means (102) disposed at an intersection of the upper cylindrical part and the lower cylindrical part; a cover nut (100) disposed within the casing at the intersection which secures the piston therethrough; an inlet filter (108) disposed within the lower cylindrical part at a lower end thereof; a pair of spray arc adjusting elements (192, 194), each spray arc adjusting element having an annular body operably attached to a neck of the piston and a pair of divergent branches (NOTE: though the divergent branches of the spray arc adjusting elements of Ridgeway subsequently converge to form a loop (192a, 194a), the spray arc adjusting elements still include the recited annular body and divergent branches, and therefore anticipate the recited "omega-shaped" elements); a shaft assembly (146, 132) which assembles together an upper sector and a lower sector of the sprinkler, the shaft assembly including a milled space (137) where a head portion (136) of the sprinkler is non-detachably fixed; a jet stream outlet (42) disposed in the upper sector; a stop member (210) having an elongate body coupled to the lower sector of the sprinkler and configured to engage the branch portions of the spray arc adjusting elements; and a jet breaker assembly including a single piece diffuser blade (160) operably attached on the shaft assembly. NOTE: Ridgeway is silent as to whether the sprinkler includes or does not include "counterweights" with the diffuser blade.

However, Ridgeway does not expressly disclose a draining means including openings

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radially arranged relative to one another at 120 degrees, nor does Ridgeway expressly disclose the stop as being stainless steel wire or the shaft as being stainless steel. Further, Ridgeway does not expressly disclose a jet breaker screw, nor does Ridgeway expressly disclose the diffuser blade as being made from plastic.

Coffey shows a rotating underground sprinkler with a pop-up head having an underground casing with an upper cylindrical part (1) of a first diameter and a lower cylindrical part (3) of a second diameter and a beveled portion (4) at an intersection of the upper and lower cylindrical parts, the intersection portion including openings (see Figures 1 and 3) which would permit draining and cleaning out of unwanted debris from inside the casing thereby preventing jamming of elements of the sprinkler head.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a beveled intersection portion having drain openings, as shown by Coffey, in the casing intersection portion of the device shown by Ridgeway, such that unwanted debris may be drained and cleaned out from the inside of the casing, thereby preventing jamming of elements of the sprinkler head. As to the openings being radially arranged relative to one another at 120 degrees, though Coffey is silent as to how the openings are arranged in the casing, the specific arrangements and locations of the openings would be determined by the user having a desired optimal draining function result in mind. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have located the drain openings of Ridgeway, as modified by Coffey, at an angle of 120 degrees relative to one another such that an optimal draining function exists.

Berkan shows an impact-type sprinkler (see Figures 1-5) having an adjustable jet breaker assembly including a jet breaker screw (24-26) operably attached to a sprinkler for adjustably dispersing spray from a jet stream outlet (19), and a single-piece, plastic (see column 4, line 35) diffuser blade (22) operably attached to an assembling shaft (27). Berkan also discloses that counterweights for the jet breaker assembly can be eliminated (see column 5, lines 39-40).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the adjustable jet breaker assembly including the jet breaker screw and the plastic diffuser blade of Berkan for the jet breaker assembly shown by Ridgeway in order to provide a more versatile jet breaking function which is inexpensive and resistant to rust.

As to the limitations of the stop being made from stainless steel wire and the shaft being made from stainless steel, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have formed the stop and shaft of Ridgeway from stainless steel wire and stainless steel, respectively, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice. *In re Leshin*, 125 USPQ 416 (CCPA 1960)

It should be noted that "omega-shaped" spray arc adjusting elements are common and well known in prior art impact sprinklers (see reference numbers 36 and 37 in the cited reference to Berkan, USPN 4,565,323).

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Allowable Subject Matter

4. Claims 3-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

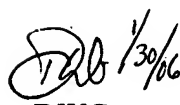
5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patents to Royer, McElhenie, Turrell, and Lerner et al. are cited as of interest.

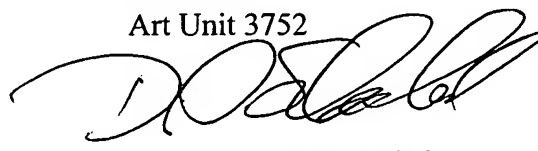
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Gorman whose telephone number is 571-272-4901. The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on 571-272-4919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Darren W Gorman
Examiner
Art Unit 3752


DWG
January 30, 2006


David A. Scherbel
Supervisory Patent Examiner
Group 3700